

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL 2724
16-md-2724

THIS DOCUMENT RELATES TO:

*STATE ATTORNEYS GENERAL
LITIGATION*

HON. CYNTHIA M. RUFE

Civil Action No.

2:17-cv-3768-CMR

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
DEFENDANTS' JOINT MOTIONS TO DISMISS PLAINTIFFS'
FEDERAL LAW CLAIMS AND STATE-LAW CLAIMS**

Defendants submit this Notice of Supplemental Authority in further support of their Joint Motion to Dismiss Plaintiffs' Federal Law Claims for Lack of Standing, Dkt. 74, and Joint Motion to Dismiss Plaintiffs' State-Law Claims, Dkt. 157. The joint motions argue, *inter alia*, that disgorgement is not an available remedy to the States under Section 16 of the Clayton Act, 15 U.S.C. § 26, which permits plaintiffs to seek "injunctive relief" for harm caused by "threatened loss or damage by a violation of the antitrust laws," or under certain state laws authorizing "injunctions" or "injunctive relief."

On April 22, 2021, the Supreme Court issued its opinion in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021), analyzing the availability of equitable monetary relief in a similar context: Section 13(b) of the Federal Trade Commission Act (15 U.S.C. § 53(b)), which, like Section 16 of the Clayton Act, governs forward-looking remedies and authorizes injunctive relief. The Court held that Section 13(b) does not allow for recovery of equitable monetary remedies. *See AMG Capital*, 141 S. Ct. at 1347 ("An 'injunction' is not the same as an award of equitable monetary relief"). The Court's reasoning and holding closely track Judge

O’Scannlain’s special concurrence in the Ninth Circuit’s decision in *AMG Capital*, which Defendants cited in their reply brief in support of their joint motion to dismiss. Dkt. 164 at 2–4.¹

AMG Capital is relevant to the following sections of Defendants’ briefs in support of their joint motions to dismiss: Defendants’ Memorandum of Law in Support of Their Joint Motion to Dismiss Plaintiffs’ Federal Law Claims for Lack of Standing, Dkt. 74-1 at 5–7 (“The States Cannot Obtain Monetary Relief Under Federal Law”); Defendants’ Reply in Support of Their Joint Motion to Dismiss Plaintiffs’ Federal-Law Claims for Lack of Standing, Dkt. 164 at 1–4 (“Section 16 Of The Clayton Act Does Not Provide for a Disgorgement Remedy”); Defendants’ Joint Motion to Dismiss Plaintiffs’ State-Law Claims, Dkt. 157 at 2, 5–7, 9–10 (arguing that States are not authorized to assert claims for monetary relief under statutes that authorize injunctive relief); Defendants’ Reply in Support of Their Joint Motion to Dismiss Plaintiffs’ State-Law Claims, Dkt. 183 at 1, 7, 21–22 (same).

A copy of the Supreme Court’s opinion in *AMG Capital* is attached hereto as Exhibit A.

¹ Further, the Court in its opinion cited *FTC v. Abbvie, Inc.*, 976 F.3d 327 (3d Cir. 2020), leaving that decision in place as controlling precedent in the Third Circuit. *AMG Capital*, 141 S. Ct. at 1351. Defendants previously submitted a notice of supplemental authority on *Abbvie*, which noted that *AMG Capital* was pending before the Supreme Court and explained that *Abbvie* and *AMG Capital* concern legal issues similar to those before this Court, namely, what the term “injunction” authorizes and what remedies are available under provisions granting forward-looking relief. Dkt. 231.

Dated: May 5, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, a copy of the foregoing **Notice of Supplemental Authority in Support of Defendants' Joint Motions to Dismiss Plaintiffs' Federal and State-Law Claims** was served on all counsel of record via the Court's electronic filing system.

/s/ Benjamin F. Holt

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